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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,777	12/04/2003	Leigh Ann Cooper	11867.001	3375
28309	7590	04/06/2005	EXAMINER	
<b>BOWERS HARRISON LLP</b> GARY K. PRICE, ESP. 25 RIVERSIDE DRIVE PO BOX 1287 EVANSVILLE, IN 47706-1287				GELLNER, JEFFREY L
		ART UNIT		PAPER NUMBER
		3643		
DATE MAILED: 04/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/729,777	COOPER, LEIGH ANN
	<b>Examiner</b>	<b>Art Unit</b>
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Invention I (claims 1-12) in the reply filed on 8 December 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 13-15 are withdrawn for examination because they are drawn to a non-elected invention.

As to the requirement for election of species, upon reconsideration of the claim language the requirement for election of species is withdrawn. The claim language for both sets of structural claims (independent claims 1 and 7) are deemed to be drawn to Figs. 1 and 2, corresponding to previous Species A. Applicant's election of Species B in the reply filed on 8 December 2005 is considered moot. Claims 1 through 6 are rejoined and examined. By original presentation Applicant is considered to have elected the invention disclosed in Figs. 1 and 2 for examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. §102(b) as being anticipated by Walton et al. (US 4,858,381).

As to Claim 7, Walton et al. disclose a floral holder (Figs. 1-4) comprising a body portion (10 of Figs. 1 and 2) with a top surface (25 of Figs. 1 and 2), walls and a lower surface defining a water-containing basin (30 of Figs. 1 and 2), a slot opening (35 and 35A of Figs. 1 and 2) disposed on the top surface, the slot opening for accessing the water basin from the top surface; a cap (34 of Fig. 2) removably positioned in sealing contact with the opening; a foam block (32 of Figs. 1 and 2) removably positioned on the top surface; and, a wicking cloth (36 of Figs. 1 and 2) having a first end in contact with the foam block (first end defined as having portion of 36 that is in contact with the foam) and a second end that passes through the slot opening and is submerged in the water contained in the water basin (Fig. 2).

#### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Walton et al. (US 4,858,381) in view of Ray (US 6,055,769).

As to claim 1, Walton et al. disclose a floral holder (Figs. 1-4) comprising a body portion (10 of Figs. 1 and 2) with a top surface (25 of Figs. 1 and 2), walls and a lower surface defining a water-containing basin (30 of Figs. 1 and 2), an opening (33 of Figs. 1 and 2) adjacent to the top

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surface, a slot opening (35 and 35A of Figs. 1 and 2) disposed on the top surface, the slot opening for accessing the water basin from the top surface; a cap (34 of Fig. 2) removably positioned in sealing contact with the opening; a foam block (32 of Figs. 1 and 2) removably positioned on the top surface; and, a wicking cloth (36 of Figs. 1 and 2) having a first end in contact with the foam block (first end defined as having portion of 36 that is in contact with the foam) and a second end that passes through the slot opening and is submerged in the water contained in the water basin (Fig. 2); wherein the water is poured into a basin through the opening (Fig. 2). Not disclosed is the body portion having a pair of sidewalls, a front wall, and a back wall. Ray, however, discloses a foam, floral holder with a pair of sidewalls, a front wall, and a back wall (shown in Figs. 1-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the floral holder of Walton et al. by making rectangular with side, front and back walls as disclosed by Ray so as to present an aesthetically pleasing configuration to the purchaser (col. 3 lines 2-6).

As to claim 2, Walton et al. as modified by Ray further disclose the opening disposed on an upper end (see Fig. 2 of Walton et al.) of the body portion.

As to claim 3, Walton et al. as modified by Ray further disclose the walls defining a ledge along the perimeter of the top surface (from 19 and 20 of Fig. 2 of Walton et al; ledge shown in Fig. 1 of Ray).

As to claim 4, Walton et al. as modified by Ray further discloses the foam block resting on the top surface and within the confines of the ledge (Fig. 2 of Walton et al.; Fig. 1 of Ray).

As to claim 5, Walton et al. as modified by Ray further disclose the foam block extending the approximate length and width of the top surface (Fig. 1 of Ray).

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As to claim 6, Walton et al. as modified by Ray further disclose the first end of the wicking cloth sandwiched between the top surface of the foam surface (Fig. 2 of Walton et al.).

As to claim 8, the limitations of Claim 7 are disclosed as described above. Ray further discloses the walls defining a ledge along the perimeter of the top surface (from 19 and 20 of Fig. 2 of Walton et al; ledge shown in Fig. 1 of Ray). Not disclosed is the body portion having a pair of sidewalls, a front wall, and a back wall. Ray, however, discloses a foam, floral holder with a pair of sidewalls, a front wall, and a back wall (shown in Figs. 1-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the floral holder of Walton et al. by making rectangular with side, front and back walls as disclosed by Ray so as to present an aesthetically pleasing configuration to the purchaser (col. 3 lines 2-6).

As to claim 9, Walton et al. as modified by Ray further discloses the foam block resting on the top surface and within the confines of the ledge (Fig. 2 of Walton et al.; Fig. 1 of Ray).

As to claim 10, Walton et al. as modified by Ray further disclose the foam block extending the approximate length and width of the top surface (Fig. 1 of Ray).

As to claim 11, Walton et al. as modified by Ray further disclose the first end of the wicking cloth sandwiched between the top surface of the foam surface (Fig. 2 of Walton et al.).

As to claim 12, Walton et al. as modified by Ray further disclose a water tight seal between the top surface and the body portion (see Fig. 2 of Walton et al.).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Connel, Roder, Kenyon,Liley, and Matsumura disclose in the prior art various

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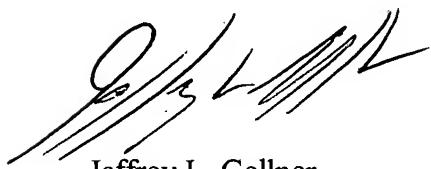
foam floral holders. Haller disclose in the prior art a foam holder with a wicking cloth. Cooper ('961 A1) discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (after 4 April 2005 use: 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner  
Primary Examiner